

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
WILLIAM W. McGIMPSEY }

For Appellant: William W. McGimpsey,
in pro. per..

For Respondent: Charlotte A. Meisel
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of William W. McGimpsey against a proposed assessment of additional personal income tax in the amount of \$311.73 for the year 1978.

Appeal of William W. McGimpsey

The sole issue for determination is whether appellant qualified as a head of household for the year 1978. Respondent's original assessment included a penalty for failure to furnish information; however, respondent conceded on appeal that the penalty should be withdrawn.

Appellant and his former wife were divorced in 1977. At the time of the divorce, they had two minor sons, William and Shawn. They were awarded custody of their sons jointly. For the year 1978, William and Shawn lived with appellant for seven and one-half months and with their mother for four and one-half months.

On his 1978 income tax return, appellant claimed head of household status. He named his son William as the person qualifying him for that status. Respondent determined that appellant did not qualify for such status in 1978 because William was not a member of appellant's household for the entire year. Appellant does not dispute the finding that his son did not reside with him for the entire year, but rather contends that he should be granted head of household status because he provided all of William's support in 1978.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code which provides in pertinent part:

[A]n individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, and ...

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(1) A son ... of the taxpayer

Thus, whether or not appellant qualifies as a head of household depends on whether William maintained his principal place of abode in appellant's household for the 1978 taxable year. In prior appeals, we have held that this requirement means that the qualifying individual must occupy the household for the taxpayer's entire taxable year. (Appeal of Douglas R. Railey, Cal. St. Bd. of Equal., Aug. 15, 1978; Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; Appeal of Willard S.

Appeal of William W. McGimpsey

Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974; see, construing the similar federal statutory provision (Int. Rev. Code of 1954, § 2(b)(1)), Stanback, Jr. v. United States, 39 Am.Fed.Tax R.2d 805 (1977).) Providing support for an individual is not a determinative factor for head of household status. (Appeal of Edward J. Rozcicha, Cal. St. Bd. of Equal., March 4, 1980.)

In his protest, appellant states that William lived with him for seven and one-half months in 1978 and with his mother for the remaining four and one-half months. Therefore, we conclude that appellant cannot qualify for head of household status because William did not live with appellant for the entire 1978 tax year.

Appeal of William W. McGimpsey

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

'IT IS HEREBY ORDERED, 'ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of William W. McGimpsey against a proposed assessment of additional personal income tax 'in the amount of' \$311.73 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of July, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett, Chairman

Conway H. Collis, Member

'Ernest J. Dronenburg, Jr., Member

Richard Nevins ---, Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9